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A-9

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/554,969 05/23/00 FRANKENBACH

G 7258X

EXAMINER

IM51/0228

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HARDEE, J

ART UNIT

PAPER NUMBER

1751

DATE MAILED:

02/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/554,969

Applicant(s)

Frankenbach et al.

Examiner

John R. Hardee

Group Art Unit
1751



- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1 and 12-39 is/are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1 and 12-39 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single fabric softening active to which the claims must be restricted.

Group I, claim(s) 1 and 12-29, drawn to quaternary ester and amide fabric softeners as depicted in claim 15.

Group II, claim(s) 1 and 12-29, drawn to open-chain quats as depicted in claim 16.

Group III, claim(s) 1 and 12-29, drawn to heterocyclic quats as depicted in claim 16(2).

Group IV, claim(s) 1 and 12-29, drawn to heterocyclic amines as depicted in claim 16(3).

Group V, claim(s) 1 and 12-29, drawn to amides as depicted in claim 16(4-6).

Group VI, claim(s) 1 and 12-29, drawn to diheterocyclic quats as depicted in claim 16(7).

Group VII, claim(s) 1 and 12-29, drawn to mixtures of the above.

Having chosen a fabric softening active, applicant is required to elect a single phase stabilizer to which the claims must be restricted.

Group A, claim(s) 1 and 12-29, drawn to heterocyclic surfactants as depicted in claim 29(A).

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Group B, claim(s) 1 and 12-29, drawn to polyhydroxy fatty acid amides as depicted in claim 29(B).

Group C, claim(s) 1 and 12-29, drawn to mixtures of A and B.

Group D, claim(s) 1 and 12-29, drawn to surfactant complexes as recited in claim 30.

Group E, claim(s) 1 and 12-29, drawn to block copolymers as recited in claim 31.

Group F, claim(s) 1 and 12-29, drawn to the cationics of claim 32 in which B groups are not present.

Group G, claim(s) 1 and 12-29, drawn to the cationics of claim 32 where B is oxygen.

Group H, claim(s) 1 and 12-29, drawn to the cationics of claim 32 where B is amine.

Group I, claim(s) 1 and 12-29, drawn to the cationics of claim 32 where B is ester.

Group J, claim(s) 1 and 12-29, drawn to the cationics of claim 32 where B is amide.

2. The inventions listed as Groups I-VII and A-J do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the fabric softeners and the phase stabilizers lack common structural features except, in the case of the fabric softeners, a nitrogen atom and a long-chain alkyl group, both of which are well known in the surfactant art and do not make a contribution over the prior art. Alternatively, any technical feature which unites the inventions does not make a contribution over the prior art in view of the X references cited in the PCT Search Report.

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PCT Rule 13.2 states: "Where a group of inventions is claimed in one and the same international application, the requirement for unity of invention referred to in Rule 13.1 shall be fulfilled only when there is a **technical relationship** among those inventions involving one or more of the **same or corresponding special technical features**. The expression 'special technical feature' shall mean those technical features that **define a contribution which each of the claimed inventions**, considered as a whole, **makes over the prior art**." (Emphasis added.)

3. A telephone call was made to Mr. Frank Turner on February 21, 2001 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (703) 305-5599. The examiner can normally be reached on Monday through Friday from 7:30 until 4:00. In

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the event that the examiner is not available, his supervisor, Dr. Yogendra Gupta, may be reached at (703) 308-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read "J. Hardee", with a stylized flourish at the end.

John R. Hardee
Primary Examiner
February 27, 2001